

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

May 2, 2008

TO: Persons on the attached mailing list.

RE: JOCO Holding Corporation  
Permit No. WQ0002730000

### **Decision of the Executive Director.**

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Burleson City Hall, City Secretary's Office, 141 West Renfro, Burleson, Texas 76028.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

### **How To Request a Contested Case Hearing.**

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
  - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
  - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

### **How To Request Reconsideration of the Executive Director's Decision.**

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

### **Deadline for Submitting Requests.**

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received** by the Chief Clerk's office no later than **30 calendar days** after the date of this letter: You should submit your request to the following address:

LaDonna Castañuela, Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

### **Processing of Requests.**

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

### **How to Obtain Additional Information.**

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



LaDonna Castañuela  
Chief Clerk

LDC/er

Enclosures

MAILING LIST  
for  
JOCO Holding Corporation  
Permit No. WQ0002730000

FOR THE APPLICANT:

Martha Martin  
JOCO Holding Corporation  
P.O. Box 10  
Burleson, Texas 76097-0010

James D. Martin, P.E.  
Martin Consulting Engineers, Inc.  
P.O. Box 121962  
Fort Worth, Texas 76121

FOR THE EXECUTIVE DIRECTOR:

Timothy J. Reidy, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087

Charles Shepphard, Technical Staff  
Texas Commission on Environmental Quality  
Water Quality Division MC-148  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE:

Bridget Bohac, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL:

Blas J. Coy, Jr., Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

LaDonna Castañuela  
Texas Commission on Environmental Quality  
Office of Chief Clerk MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

PROTESTANTS/INTERESTED PERSONS:

See attached list.

Timothy J. Reidy, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087

BOBBY G BROWN  
215 W BETHESDA RD  
BURLESON TX 76028-1632

KEN OLSEN  
2540 S INTERSTATE 35 W  
BURLESON TX 76028-1625

NINA FAYE BROWN  
145 W BETHESDA RD  
BURLESON TX 76028-1611

RAND RADEMAKER  
300 W BETHESDA RD  
BURLESON TX 76028-1631

SONNY J CREACH  
301 W BETHESDA RD  
BURLESON TX 76028-1633

FLOYD WATKINS  
2324 S INTERSTATE 35 W  
BURLESON TX 76028-6176

TIM DAVIS  
175 W BETHESDA RD  
BURLESON TX 76028-1611

BENNIE FAY WOODS  
305 W BETHESDA RD  
BURLESON TX 76028-1633

ALBERT GERMAIN  
2260 S BURLESON BLVD  
BURLESON TX 76028-1622

ROGER HOLCOMB  
2450 S BURLESON RD  
BURLESON TX 76028

J WALKER HOLLAND ATTORNEY  
HOLLAND JOHNS SCHWARTZ & PENNY LLP  
STE 500  
306 W 7TH ST  
FORT WORTH TX 76102-4900

NORMAN LASSETTER  
3408 MORFELD DR  
CROWLEY TX 76036-4534

PATSY LAUDERBACK  
2760 S INTERSTATE 35 W  
BURLESON TX 76028-1446

K C NEUBAUER  
2710 S INTERSTATE 35 W  
BURLESON TX 76028-1446

## RENEWAL OF TPDES PERMIT NO. WQ0002730000

APPLICATION BY § BEFORE THE 2008 APR 25 AM 10:07  
§  
JOCO HOLDING CORPORATION § TEXAS COMMISSION ON CHIEF CLERKS OFFICE  
§  
§ ENVIRONMENTAL QUALITY  
§

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**EXECUTIVE DIRECTOR'S FIRST AMENDED RESPONSE TO PUBLIC  
COMMENT**

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The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this First Amended Response to Public Comment (Response) on JOCO Holding Corporation's application and the Executive Director's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received comments from the following persons: Ken Olsen, Albert Germain, Bobby G. Brown, Roger Holcomb, Patsy Lauderback, Nina Faye Brown, Norman Lassetter, Tim Davis, K.C. Neubauer, Floyd Watkins, Bennie Fay Woods, Rand Rademaker, Sonny J. Creach, and J. Walker Holland. This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

**BACKGROUND**

Description of Facility

JOCO Holding Corporation (the Applicant) filed an amended application with the TCEQ for a renewal of TPDES Permit No. WQ0002730000, which authorizes the disposal of domestic wastewater by evaporation and irrigation of coastal bermuda grass at an application rate not to exceed 3.85 acre-feet per year per acre irrigated. This permit renewal will not authorize a discharge of pollutants into water in the state.

The facility and land application site are on the east side of Interstate Highway 35 West, approximately 2000 feet southeast of Bethesda Road overpass and approximately 5.1 miles southeast of the City of Burleson, Johnson County, Texas. The facility and land application site are located in the drainage areas of the Upper Trinity River, Segment No. 0805 of the Bays and Estuaries, and Lake Arlington, Segment No. 0828 of the Bays and Estuaries.

Procedural Background

The Applicant, which operates a motel and restaurant complex, originally applied for a major amendment to its existing permit seeking authorization to discharge treated domestic and food wastewaters at a daily average flow of 10,000 gallons per day. TCEQ received this application on October 20, 2004, and declared it administratively complete on January 8, 2005. The original Notice of Application and Intent to Obtain a Water Quality Permit (NORI) was published on February 9, 2005 in the *Burleson Star*. The original Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD) was published on November 2, 2005 in the *Burleson Star*. Notice of a Public Meeting was published on May 14, 2006 in the *Burleson Star*. A public meeting was held on June 22, 2006 in the Chamber of Commerce Building, 1044 S.W. Wilshire Blvd., Burleson, TX. 76028. To correct an error in the original notices regarding the location of the application for public review, the second NAPD was published on August 23, 2006 in the *Burleson Star*. The public comment period ended on September 22, 2006. The Executive Director's Response to Public Comment (RTC) was filed on November 2, 2006. The Executive Director's Final Decision Letter was mailed November 7, 2006 and the period for timely filing a Request for Reconsideration or Contested Case Hearing Request ended on December 7, 2006. Two timely Requests for Reconsideration were received, and set to be considered by the commissioners of the TCEQ on March 28, 2007. The Applicant filed a letter with the Executive Director on March 21, 2007 requesting a withdrawal of the major amendment portion of the permit application seeking authorization to discharge and pursuing the renewal of the land application portion of the permit only. On March 23, 2007, the file was remanded to the Executive Director for processing as a renewal application.

The Combined NORI/NAPD was published on February 20, 2008 in the *Burleson Star*. The public comment period ended on March 21, 2008. No public comments were received during the most recent public comment period. This response amends the Executive Director's original RTC, filed November 2, 2006, which is no longer accurate due to the Applicant's subsequent withdrawal of its request for a major amendment. This application was declared administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76<sup>th</sup> Legislature, 1999.

## **COMMENTS AND RESPONSES**

### **COMMENT 1:**

Ken Olsen, Albert Germain, Bobby G. Brown, Roger Holcomb, Patsy Lauderback, Nina Faye Brown, Norman Lassetter, Tim Davis, K.C. Neubauer, Floyd Watkins, Bennie Fay Woods, Rand Rademaker, and Sonny J. Creach all commented that the permit application was not available for viewing and copying at the U.S. Post Office at 232 Southwest Johnson Avenue, Burleson, Texas.

### **RESPONSE 1:**

The Executive Director's original response read as follows:

"The Applicant is required to complete an Application Availability Verification Form (AAVF) for each wastewater permit application submitted to the TCEQ. The AAVF requires that the Applicant certify that a copy of the complete permit application, including revisions, draft permit, and the Executive Director's preliminary decision, was made available at a public place in the county where the facility is located 'in accordance with the provisions of 30 TAC, Section 39.405(g)(2).' This provision also provides that the application shall be available 'beginning on the first day of newspaper publication required by this section and remain available until final resolution, either by TCEQ or the State Office of Administrative Hearing (SOAH).' The TCEQ received the Applicant's AAVF on November 15, 2005, stating that the application was available at the Burleson City Hall during the comment period. However, the NORI stated that the application was available at the U.S. Post Office in Burleson.

In response to Comment 1, the Applicant was required to republish the NAPD and submit a new AAVF. The AAVF certified that a copy of the application was available at the Environmental Services City Service Center, 1675 S.E. John Jones, Burleson, Texas. This is consistent with the republished NAPD."

This response does not require amendment. During the most recent public comment period the permit renewal application was available for viewing and copying at Burleson City Hall, City Secretary's Office, 141 West Renfro, Burleson, Texas 76028.

#### **COMMENT 2:**

Ken Olsen, Albert Germain, Bobby G. Brown, Roger Holcomb, Patsy Lauderback, Nina Faye Brown, Norman Lassetter, Tim Davis, K.C. Neubauer, Floyd Watkins, Bennie Fay Woods, Rand Rademaker, and Sonny J. Creach commented that Quil Miller Creek is in a flood zone.

#### **RESPONSE 2**

The Executive Director's original response read as follows:

"The wastewater permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. The TCEQ has not considered flooding in water quality permit processing. However, proposed permit does not authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations."

The Applicant has amended its application, seeking to renew its permit for the irrigation of its wastewater. The Applicant has withdrawn its request to discharge into Quil Miller Creek.



### **COMMENT 3:**

J. Walker Holland and Nina Faye Brown commented that they own property down gradient from the above-referenced motel and restaurant complex and that they object to effluent discharged to creeks that traverse their property. Tim Davis also expressed concern regarding how the Applicant will get the 10,000 gallons of water per day to Quil Miller Creek.

### **RESPONSE 3:**

The Executive Director's original response read as follows:

"The issuance of this permit does not grant the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation, or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route."

The Applicant has withdrawn its request for a major amendment to discharge wastewater. The renewal application currently before the Executive Director seeks authorization to dispose of domestic wastewater via evaporation and irrigation. The proposed permit renewal would not authorize the Applicant to discharge wastewater along a discharge route or into Quil Miller Creek.

### **COMMENT 4:**

Tim Davis and Nina Faye Brown commented that they graze cattle along the discharge route and do not want their cows drinking treated wastewater or eating grass that is growing in wastewater land.

### **RESPONSE 4:**

The Executive Director's original comment read as follows:

"The draft permit was written to comply with the Texas Surface Water Quality Standards (30 TAC, Chapter 307). The Texas Surface Water Quality Standards require that any discharge maintain water quality consistent with the protection of human health, terrestrial life, and aquatic life. The effluent from the proposed facility has reported a TDS concentration of 662 mg/L of TDS and therefore should not pose a problem for cattle consumption. The permittee's effluent analysis provided with the permit application yielded a nitrate nitrogen level of 17 mg/L nitrate nitrogen. This level of nitrate nitrogen should not pose a problem to the cattle.

The permittee has also proposed to chlorinate the effluent to preclude bacterial contamination to surface water which should prevent bacterial infection of any cattle drinking from the receiving stream."

The Applicant has withdrawn its request for a major amendment to discharge wastewater. The renewal application currently before the Executive Director seeks authorization to dispose of treated effluent via evaporation from a storage pond and irrigation of 20 acres of coastal bermuda grass. The facility and land application site are located on the Applicant's property, and should not affect neighboring cattle.

#### **CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT**

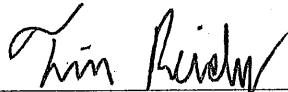
No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental  
Quality

Glenn Shankle  
Executive Director

Robert Martinez, Director  
Environmental Law Division

By 

Timothy J. Reidy, Staff Attorney  
Environmental Law Division  
State Bar No. 24058069  
P.O. Box 13087, MC 173  
Austin, Texas 78711-3087  
(512) 239-0969

REPRESENTING THE EXECUTIVE  
DIRECTOR OF THE TEXAS  
COMMISSION ON ENVIRONMENTAL  
QUALITY

**CERTIFICATE OF SERVICE**

I certify that on April 25, 2008, the "Executive Director's First Amended Response to Public Comment" for Permit No. WQ0002730000 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



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Timothy J. Reidy, Staff Attorney  
Environmental Law Division  
State Bar No. 24058069

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COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2008 APR 25 AM 10:07  
CHIEF CLERKS OFFICE